

PLEA AND COOPERATION AGREEMENT

1. This is the plea and cooperation agreement between the Attorney General of the State of New York ("the Attorney General") and defendant Elliott B. Broidy ("Broidy"). This memorandum of agreement constitutes the entire agreement between Broidy and the Attorney General. There are no promises, agreements, or conditions, express or implied, other than those set forth in this document. No modification, deletion, or addition to this agreement will be valid or binding on either party unless put into writing and signed by both parties.

2. Broidy agrees to prosecution by means of a Superior Court Information. On a date determined by the Attorney General, Broidy shall surrender upon a felony complaint and appear to be arraigned in New York County Criminal Court where he shall waive his right to a grand jury proceeding, and his right to prosecution by means of indictment.

3. Broidy will appear before the Court where New York County Superior Court Information Number 5695/2009 ("the SCI") is pending and request that the Court approve this Agreement. This Agreement will become effective only upon the Court's approval. Upon the Court's approval, Broidy will plead guilty as set forth in paragraph 4 below. At the time of the plea, Broidy will waive all defenses and all rights of appeal, and shall sign a waiver of appeal form as provided by the Attorney General.

4. Broidy will plead guilty under the SCI to one count of rewarding official misconduct in the second degree, in violation of Penal Law §200.20, a class E felony, in full satisfaction of the SCI and the conduct set forth in the allocution, which is attached in Exhibit A. At the time of the plea, Broidy shall allocute under oath as set forth in Exhibit A.

5. Broidy consents to any and all adjournments of his sentencing and any other proceedings under the SCI as may be requested by the Attorney General for the purpose of continuing Broidy's cooperation pursuant to this Agreement. If necessary to facilitate Broidy's cooperation, the plea described in paragraphs 3 and 4 above may be postponed or the entry of the plea may be postponed, and Broidy consents to all such postponements.

6. Broidy agrees to pay \$18 million in stipulated forfeiture, which is the total amount the Attorney General will seek to recover from Broidy directly. This stipulated forfeiture shall be distributed in accordance with the provisions of CPLR §1349, as though the Attorney General's Office had prevailed upon a forfeiture action. The payment shall be paid according to the following schedule: \$4 million shall be paid no later than June 30, 2010; \$7 million shall be paid no later than June 30, 2011; and the remaining \$7 million shall be paid no later than three years from the date of this agreement. These payments shall be made by wire transfer according to instructions to be provided by the Attorney General. Broidy understands and agrees that failure to pay any part of this payment when due shall be deemed a material breach of this agreement.

7. Broidy shall not directly or indirectly solicit or receive investments from the State of New York or any governmental entity within the State of New York, and for a period of five years from the date of this agreement shall not directly or indirectly enter into any contracts with the State of New York or any governmental entity within the State of New York.

8. Broidy's cooperation shall be as set forth in this paragraph. Failure to comply with this paragraph in any respect shall be a violation of this Agreement.

a. Broidy shall fully, fairly, and truthfully disclose all information and produce all records and other evidence in his possession, custody, or control which are either (i) relevant to any criminal conduct whatsoever about which he has any knowledge or information, whether such conduct has occurred before or after this Agreement has become effective, and whether or not he is questioned about such conduct, or (ii) relevant to any inquiry made by the Attorney General. Broidy shall provide such disclosures and evidence to the Attorney General and to such investigators, inspectors, detectives, or staff persons of government agencies or other organizations as the Attorney General may direct.

b. Broidy shall fully, fairly, and truthfully testify before the grand jury, at any trial, and at any other proceeding, at any date and time that the Attorney General may direct. Whenever directed by the Attorney General to testify at any proceeding, Broidy shall not assert any privilege against self-incrimination, and if directed to testify before a grand jury, Broidy shall waive immunity pursuant to Criminal Procedure Law § 190.45.

c. Broidy shall actively participate in ongoing investigations by the Attorney General. Active participation shall be as the Attorney General directs and only as the Attorney General directs. Active participation may include, but is not limited to, consenting to the release of records, repatriating money and assets, engaging in transactions, attending meetings, making telephone calls, and recording, or consenting to the recording of, transactions, meetings, and telephone calls.

d. Upon request by the Attorney General at any time, Broidy shall provide accurate and complete written disclosure of his financial condition, including disclosure of all assets, liabilities, sources of income, and expenses. The Attorney General may direct that such disclosure be sworn to and made on a form provided by the Attorney General. Broidy's obligation shall include but not be limited to: (i) the disclosure of any and all interests, direct or indirect, in any and all real or personal property, whether tangible or intangible, including all interests in property held by or in the names of other persons or entities, wherever located; (ii) taking all steps necessary to obtain disclosure of financial information from other persons if requested by the Attorney General; and (iii) providing any and all supplemental financial disclosure requested by the Attorney General, including but not limited to providing documents and other tangible items.

e. Broidy shall commit no further crimes.

f. Broidy shall not knowingly make any statement or commit any act that might compromise the safety or identity of any investigator or the confidentiality of any investigation, provided that Broidy must make such statement or do such act if required by law. If Broidy becomes aware that such statement or act may be required by law, he must immediately, and prior to making such statement or doing such act, notify the Attorney General.

g. Broidy shall meet whenever requested by the Attorney General, with the Assistant Attorneys General or investigators, inspectors, detectives, or staff persons of government agencies or other organizations, as the Attorney General may direct.

9. If Broidy fully complies with this Agreement, as determined solely by the Attorney General:

a. The Attorney General will inform the Court of the nature and extent of Broidy's criminal conduct and the nature, extent, and value of his cooperation. At the time of sentencing, the Attorney General will make a sentencing recommendation to the Court.

b. Broidy understands that the Court has the authority to impose any lawful sentence, including a sentence of incarceration, pursuant to his guilty plea. The maximum permissible sentence for rewarding official misconduct in the second degree is imprisonment for a term of 1 1/3 – 4 years, plus applicable monetary sanctions such as a fine, restitution, and reparation.

10. If Broidy violates this Agreement in any respect, as determined solely by the Attorney General:

a. If Broidy has not yet pleaded guilty pursuant to paragraph 4 above, the Attorney General may prosecute Broidy pursuant to the SCI and by a separate accusatory instrument. The Attorney General may charge Broidy with additional crimes of which the Attorney General has knowledge, provided that any crime charged would not have been time-barred if charged on or before the date of this agreement. As to any such prosecution, Broidy consents to any consolidation of his SCI or indictment with another related indictment.

b. If Broidy has pleaded guilty pursuant to paragraph 4 above, the Attorney General may request at any time that the Court order entry of the guilty plea and impose sentence based on Broidy's guilty plea. The Attorney General may request the maximum sentence authorized by law as set forth in paragraph 9 above.

c. In any prosecution, the Attorney General may offer, in the Attorney General's case-in-chief, in any defense case, or in rebuttal, any statement or testimony Broidy has made or given, and any property Broidy has produced, whether before or after the date of this Agreement, and Broidy waives all Constitutional, statutory, and other legal claims that any such statement, testimony, evidence, or leads derived therefrom

should be suppressed. In any sentencing proceeding, the Attorney General will inform the Court of the nature and extent of Broidy's criminal conduct and breach of this Agreement, and may offer any statement or testimony Broidy has made or given, and any property Broidy has produced, in the course of his cooperation with the Attorney General, whether before or after the date of this Agreement.

d. The Attorney General may request, if necessary, that the plea be entered and sentence be imposed in Broidy's absence. Broidy understands that the Court may so enter the plea and impose sentence.

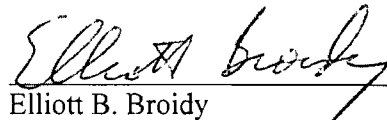
e. Broidy understands that the Court has the authority to impose any lawful sentence.


11. The Attorney General shall not be deemed, by any act, statement, or omission, to have waived any violation of this Agreement unless such waiver is put into writing and signed by both parties.

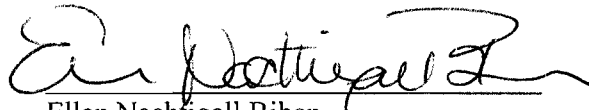
12. This agreement supersedes any prior agreement between the parties. Nothing in this agreement shall bar the prosecution of Broidy for the crimes of perjury or contempt should Broidy fail to testify truthfully in any grand jury proceeding, pre- or post-trial hearing, trial or other proceeding.

13. This Agreement is limited to the New York State Attorney General and cannot bind other government agencies.

Dated: New York, New York
December 1, 2009


Elliott B. Broidy
Defendant


Ralph C. Ferrara, Esq. *py C-JL*
Attorney for Elliott B. Broidy


Ellen Nachtigall Biben
Special Deputy Attorney General
For Public Integrity

APPROVED:


Justice of the New York State Supreme Court

EXHIBIT A

From in or about November 2002 through in or about November 2009, I, acting in concert with high-ranking officials at the Office of the New York State Comptroller, including David Loglisci, the former head of alternative investments and chief investment officer of the New York State Common Retirement Fund, knowingly conferred and offered and agreed to confer benefits upon public servants for having violated their duties as public servants.

In seeking investments from the New York State Common Retirement Fund, I made payments for the benefit of high-ranking officials at the Office of the New York State Comptroller, who had influence and decision-making authority over investment decisions. I made these payments upon the agreement and understanding that the Office of the New York State Comptroller officials would exercise their judgment and discretion in favor of Markstone Capital Partners, and in violation of their fiduciary and other duties as public officials. Further, I concealed the fact and circumstances of these payments from investment staff and others at the Office of the New York State Comptroller, aside from those individuals who were complicit with me. In connection with this arrangement, the New York State Common Retirement Fund made investments with Markstone Capital Partners of approximately \$250,000,000.

Pursuant to my agreement and understanding with Office of the New York State Comptroller officials, I made the following illicit payments, among others:

i. In or about January 2003, I entered into a sham consulting agreement pursuant to which I paid or caused to be paid in excess of \$380,000 to a consultant over a period of more than two years. At my direction, Markstone Capital Partners failed to comply with its obligation to disclose these as payments in connection with the New York State Common Retirement Fund investment in Markstone.

ii. At the direction of a certain high-ranking Office of the New York State Comptroller official, between in or about October 2003 and in or about October 2005, I paid in excess of \$130,000 to two friends of the official. In order to disguise certain of these payments, I entered into a sham loan agreement with one of the official's friends, which purported to govern the payments. However, I never intended to, nor did I seek repayment of any of these payments, whether covered by the loan agreement or otherwise.

iii. On at least five occasions, between in or about April 2003 and in or about June 2006, I traveled to Israel, and on one occasion to Italy, with high-ranking officials of the Office of the New York State Comptroller. In connection with these trips, I paid at least \$75,000 in travel expenses incurred by Office of the New York State Comptroller officials, as well as the expenses of one official's adult children. To conceal these payments, I financed some of the expenses through charitable organizations, and thereby caused false invoices to be submitted to Office of the New York State Comptroller.

iv. On or about June 16, 2003 and on or about August 18, 2004, I contributed \$300,000 to a movie, "Chooch," in which David Loglisci's brother had a financial interest, in order to curry favor with David Loglisci with respect to the Markstone investment. In order to conceal my involvement in financing the movie, I made these contributions through a third-party nominee, by asking him to write checks for the benefit of "Chooch". I reimbursed the third-party nominee.